

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 12-AE-12189-RAP
)	
ROBERT IRVING DUSKIS,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 50438,)	ENROLLMENT [Bus. & Prof. Code,
)	§ 6203, subd. (d); Rules Proc. of State Bar,
A Member of the State Bar.)	rule 5.360, et seq.]

I. INTRODUCTION

This matter is before the court on a motion filed by Joel Mark, Presiding Arbitrator of the State Bar's Mandatory Fee Arbitration Program (State Bar), seeking the involuntary inactive enrollment of Award Debtor **Robert Irving Duskis** (Award Debtor), pursuant to Business and Professions Code section 6203, subdivision (d), and rule 5.360, et seq., of the Rules of Procedure of the State Bar of California (Rules of Procedure) due to his failure to pay an arbitration award. Based on the State Bar's motion and supporting documents, the court finds that Award Debtor has failed to comply with the arbitration award and has not produced a payment plan acceptable to the client or the State Bar.

II. SIGNIFICANT PROCEDURAL HISTORY

On March 22, 2012, the Presiding Arbitrator filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. & Prof. Code, section 6203, subd. (d), Rules of Procedure, rule 5.360, et seq.) A copy of the motion was properly served at Award Debtor's official membership records address on March 21, 2012, by certified mail, return receipt requested, and by regular mail. On April 4, 2012, Award Debtor filed a response to the motion

and a request for a hearing. On April 19, 2012, the Presiding Arbitrator filed a reply to Award Debtor's response.

On April 5, 2012, the court filed a notice, setting a hearing date of May 3, 2012. On April 16, 2012, the Presiding Arbitrator filed a request to change the hearing date. On April 18, 2012, the court issued an order re-scheduling the hearing for May 2, 2012.

On May 2, 2012, the matter was re-scheduled until June 5, 2012, because Award Debtor had filed for bankruptcy protection on May 1, 2012.

A hearing was held on June 5, 2012. Presiding Arbitrator Joel Mark appeared for the State Bar. Award Debtor represented himself in this matter.

This matter was submitted for decision on June 5, 2012.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on January 5, 1972, and has been a member of the State Bar at all times since.

B. Facts

On March 27, 2009, the Orange County Bar Association served a stipulated arbitration award detailing the terms of the agreement reached between Award Debtor and Miguel Cortez (Cortez) prior to the commencement of an arbitration hearing. The terms of the agreement were that Award Debtor was to provide Cortez with a \$3,300 refund in previously paid attorney's fees and a \$250 reimbursement for arbitration filing fees, for a total payment of \$3,550.

Pursuant to the parties' stipulation, Award Debtor was required to make monthly payments of \$300.00 until the arbitration award and any interest that had accrued on the credit card that Cortez used to pay Award Debtor had been paid. Award Debtor began making payments to Cortez on April 1, 2009, and made three payments of \$300.00 (totaling \$900.00) before he stopped making payments to Cortez.

On August 7, 2009, Cortez wrote a letter to Award Debtor demanding that Award Debtor come current on the agreed upon payment plan or pay the balance of the arbitration award and

accrued interest in full. Award Debtor received the letter but failed to respond or make any further payments to Cortez. Accordingly, Cortez filed a request for enforcement of the arbitration award with the State Bar on August 19, 2009.

On September 2, 2009, the State Bar sent a letter to Award Debtor to advise him of Cortez' request and attached a copy of the August 19, 2009 letter; a copy of the arbitration award; and copies of relevant statutes and rules. The September 2, 2009 letter was mailed to Award Debtor at his membership records address by both regular and certified mail. Award Debtor did not sign for the certified mailing and it was returned as unclaimed to the State Bar. The copy sent by regular mail was not returned to the State Bar. In the letter, Award Debtor was given until October 2, 2009, to respond to the State Bar. Award Debtor did not respond to the State Bar's September 2, 2009 letter.

On October 19, 2009, the State Bar mailed a warning letter to Award Debtor, acknowledging his failure to reply to the State Bar's October 2, 2009 letter and warning Award Debtor of the ramifications of his continued failure to respond to the State Bar.

On November 13, 2009, Award Debtor telephoned the State Bar and advised that he intended to propose a payment plan of \$100 per month. Later that same day, the State Bar received a faxed letter from Award Debtor which proposed a monthly payment plan of \$100 until the arbitration award is satisfied.

On November 13, 2009, the State Bar sent a letter to Cortez concerning Award Debtor's proposed payment plan proposal. On November 17, 2009, Cortez wrote to the State Bar rejecting Award Debtor's proposal. The State Bar sent a letter to Award Debtor on November 19, 2009, advising him of Cortez' rejection of his proposal and advising him that he needed to complete and return a financial status form for the Presiding Arbitrator to evaluate the reasonableness of his proposal in relation to his financial status. A blank copy of the financial status form was attached to the letter. Award Debtor was to reply to the State Bar by December 3, 2009. Award Debtor did not reply by December 3, 2009.

The State Bar wrote to Award Debtor again on December 14, 2009, to acknowledge his failure to reply by December 3, 2009, and advising him of its intent to pursue enforcement of the arbitration award.

On December 16, 2009, Award Debtor telephoned the State Bar and left a voice-mail message asking to discuss the State Bar's arbitration enforcement case. A State Bar staff person spoke with Award Debtor on December 17, 2009, and Award Debtor stated that he would fax his completed financial status form to the State Bar by December 23, 2009. On December 23, 2009, the State Bar received a fax from Award Debtor containing his completed financial status form and a cover letter.

After the State Bar reviewed Award Debtor's financial status form, the Presiding Arbitrator's decision was mailed to Award Debtor on January 11, 2010. The Presiding Arbitrator found, among other things, that Award Debtor's financial statement was inadequate and incomplete and no significant change had occurred in Award Debtor's financial status between March 2009 and December 2009. Consequently, the Presiding Arbitrator rejected Award Debtor's proposal and ordered him to come current on the original installment plan as stated in the arbitration award. Award Debtor was given until February 1, 2010, to comply with the Presiding Arbitrator's order. Award Debtor did not reply to the January 11, 2010 letter.

On March 25, 2010, Cortez telephoned the State Bar and advised that he had not received any further communication or payment from Award Debtor. On March 29, 2010, the State Bar mailed a letter to Award Debtor. The letter informed Award Debtor that the State Bar intended to pursue enforcement proceedings.

Award Debtor did not reply to the State Bar's March 24, 2010 letter or make any further payments to Cortez on the arbitration award or the accrued interest.

Award Debtor's Contentions

Award Debtor contends that he is unable to pay the arbitration award or the payments due under a previously agreed upon payment plan and that the State Bar has unreasonably rejected his revised payment plan of \$100 per month until the arbitration award is satisfied.

In support of his contention that he is unable to pay the arbitration award, Award Debtor testified that his main source of income is \$964 in monthly Social Security checks, which does not cover his monthly expenses. Award Debtor lives in motels with his wife and her adult daughter. In addition, the Internal Revenue Service has filed approximately \$500,000 in liens against Award Debtor and he filed for Chapter 13 Bankruptcy on May 1, 2012. Award Debtor testified that he has not filed federal tax returns for the years 2006 to 2011.

Award Debtor currently has two active cases in his law practice, one case which may result in fees and another which results in about \$200 a month in attorney fees. Award Debtor is attempting to collect account receivables from his law practice, but is finding it difficult to locate people who owe him funds.

Although his law practice provides little or no extra funds in addition to his \$964 monthly social security check, Award Debtor provided no evidence, other than an attempt to collect account receivables, of his efforts to find employment in the legal profession or outside the legal profession, in an effort to increase his income to meet his financial obligations.

According to Award Debtor, his wife is too ill to work and is dependent on his income. Award Debtor suffers from a form of epilepsy. Award Debtor usually suffers from the effects of his illness at night while asleep, causing Award Debtor to bite his tongue and jerk around. Award Debtor does not take medication for his illness due to personal religious reasons. Because of his illness, the State of California revoked his motor vehicle operator's license.

Award Debtor testified that he continues to operate his motor vehicle, in disobedience of his license revocation, and does so without state mandated automobile insurance coverage. By continuing to operate his uninsured motor vehicle while his operator's license is revoked for medical reasons, Award Debtor displays conduct in willful disrespect for the law. Award Debtor's conduct also displays a blatant disregard for public safety. Award Debtor's failure to obey the law and his failure to appreciate the danger to the public caused by his continuing to operate a motor vehicle gives the court reason to question whether he actually would obey any order to reimburse Cortez.

C. Conclusions of Law

The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear and convincing evidence that Award Debtor has failed to comply with the arbitration award and has not produced a payment plan acceptable to the client or the State Bar. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 5.360, et seq.)

The court also finds the State Bar did not unreasonably reject Award Debtor's revised payment plan to Cortez in the amount of \$100.00 per month. The Presiding Arbitrator reasonably found, among other things, that Award Debtor's financial statement was inadequate and incomplete and no significant change had occurred in Award Debtor's financial status between March 2009 and December 2009.

Consequently, the court finds that Award Debtor has not met his burden of demonstrating by clear and convincing evidence that he is not personally responsible for making or ensuring payment of the award; that he is unable to pay it; or that he has proposed and agrees to comply with a payment plan which the State Bar has unreasonably rejected as unsatisfactory. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 5.365(B).)

IV. ORDER

IT IS ORDERED that Award Debtor **Robert Irving Duskis**, be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6203, subdivision (d)(1), effective five days after the date of service of this order. (Rules of Procedure, rule 5.368(B)(1).)

IT IS FURTHERED ORDERED that Award Debtor **Robert Irving Duskis** must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Miguel Cortez in the amount of \$3,550, less the \$900.00 previously paid by Award Debtor, plus interest at the rate of ten percent per annum from March 27, 2009, the date the award was served; (2) he has paid reasonable costs, if any; and (3) the court grants a motion to terminate the inactive enrollment pursuant to rule 5.370(A) of the Rules of Procedure of the State Bar of California.

Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's submission of a bill of costs. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 5.368(B)(2).)

Dated: June 25, 2012

RICHARD A. PLATEL
Judge of the State Bar Court